

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Petitions for Forbearance from )  
Application of Section 272 of the )  
Communications Act of 1934, as Amended, )  
to Previously Authorized Services )

CC Docket No. 96-149  
DA 97-1403

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**JOINT REPLY COMMENTS OF BELL ATLANTIC<sup>1</sup> AND NYNEX<sup>2</sup>**

Only two parties filed comments in response to Bell Atlantic's and NYNEX's supplemental filings supporting their forbearance petitions. Neither of these parties dispute the facts supporting the relief sought in the petitions. Indeed, AT&T acknowledges that "in light of the unique nature of the services at issue" it has no objection in principle to application of the Commission's forbearance authority.<sup>3</sup> Moreover, the limited arguments that the commenters raise do not provide a basis to deny or delay the requested relief.

MCI largely repeats its prior filings, arguing that when forbearance is granted certain non-discrimination requirements should nonetheless apply.<sup>4</sup> But as Bell Atlantic and NYNEX

<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic - Delaware; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

<sup>2</sup> The NYNEX Telephone Companies ("NYNEX") are New England Telephone and Telegraph Company and New York Telephone Company.

<sup>3</sup> Comments of AT&T at 2 (filed July 22, 1997).

<sup>4</sup> Comments of MCI Telecommunications Corp. on Supplemental Filings at 4 (filed July 22, 1997) ("MCI Comments").

previously demonstrated, the specific statutory provisions cited by MCI cannot apply in this context.<sup>5</sup> Specifically, MCI argues that Bell companies should still be obliged to comply with sections 272(c)(1) and (e). Sections 272 (c)(1), (e)(2) and (e)(4) all deal with the relationship between a Bell operating company and its 272 affiliate, but where a Bell operating company provides E911 service on an integrated basis, there by definition is no relationship between it and the long distance affiliate. And while the Commission has found that sections 272(e)(1) and (e)(3) apply even when there is no separate affiliate involved,<sup>6</sup> both of these latter provisions deal exclusively with the provision of “telephone exchange service” or “exchange access service.” To the extent that E911 is considered a telephone exchange service or access service, it is not an interLATA information service, and therefore no forbearance of the treatment of previously approved interLATA information services is required. Conversely, to the extent forbearance is required, those provisions do not apply.

MCI appears to accept these arguments, but then suggests that the Commission create new requirements relating to the telephone operating companies’ dealings with their own E911 service that are “at least equivalent” to the statutory nondiscrimination requirements imposed on a separate affiliate.<sup>7</sup> It goes well beyond the scope of this proceeding to ask the Commission to craft new requirements that do not appear in the Act.

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<sup>5</sup> See Bell Atlantic Reply Comments at 2 (filed May 6, 1997); NYNEX Reply Comments at 2 (filed June 16, 1997).

<sup>6</sup> *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, CC Docket No. 96-149, First Report and Order at ¶ 270 (rel. Dec. 24, 1996).

<sup>7</sup> MCI Comments at 4.

MCI's real goal appears to be to obtain and "upload" Bell Atlantic and NYNEX customer data bases for its own use.<sup>8</sup> Creating such a new obligation is unwarranted, unrelated to the manner in which the companies provide E911 service, and is beyond the scope of what must be decided under the Bell Atlantic and NYNEX petitions. MCI's legitimate concerns are already protected in that Bell Atlantic and NYNEX are required to provide nondiscriminatory access to E911 service.<sup>9</sup>

While AT&T does not oppose forbearance, it nevertheless attempts to raise meritless procedural roadblocks. AT&T argues that the supplemental filings fail to address the competitive effects of forbearance. To the extent AT&T suggests that section 10(b) is an independent criterion, it misreads the Act. The Act is clear that a determination that forbearance promotes competition "may be the basis for a Commission finding that forbearance is in the public interest" under subsection (a)(3).<sup>10</sup> The record here has demonstrated a number of independent reasons for finding forbearance in the public interest -- demonstrations not

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<sup>8</sup> See MCI Comments at 5. See also AT&T Comments at 6, n. 16, where AT&T uses section 272 as a springboard to argue for access to unlisted numbers and third party information. Like MCI, AT&T's argument goes beyond nondiscrimination and instead seeks the right to upload data for its own purposes.

<sup>9</sup> See 47 U.S.C. § 271(c)(2)(B)(vii). MCI complains that it "should not have to wait for BOC entry into long distance in order to obtain nondiscriminatory access . . ." MCI Comments at 8. MCI is objecting to the statutory scheme itself. Denial of the petitions here will not provide for additional protection. Indeed, to the extent the service resides in a section 272 affiliate, the terms of the existing section 271 safeguard would no longer apply. Regardless, the Bell Atlantic and NYNEX telephone companies already provide nondiscriminatory access to E911 service.

<sup>10</sup> 47 U.S.C. § 160 (b) [Section 10(b)].

challenged by AT&T.<sup>11</sup> Regardless, Bell Atlantic and NYNEX have also shown that forbearance will promote competition. Forbearance will keep the service in the hands of the same entities that have a statutory non-discrimination obligation.<sup>12</sup> Moreover, competition is served by providing the service to all carriers (and thereby to all customers) at the lowest cost -- which can only be done by continuing the efficiencies of the current service structure.

Finally, while AT&T acknowledges that compliance with section 272 will increase costs, it complains that the higher costs are not specified.<sup>13</sup> In fact, Bell Atlantic and NYNEX detailed the network duplication that would be required should the petitions be denied.<sup>14</sup> AT&T does not suggest that the cost of duplicating those network facilities does not justify forbearance -- indeed it appears to concede otherwise. Nevertheless, for illustrative purposes, the most recently installed E911 tandem switch cost approximately \$2 million. At that price, a complete replacement for each of the existing 72 multi-use E911 switches would require an investment of \$144 million. This cost does not address the need for additional duplicate equipment and personnel. Moreover, those costs would ultimately have to be recovered through higher E911

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<sup>11</sup> *See* Letter from Edward Shakin to William F. Caton at 4 (filed June 30, 1997) (“public interest is best served by a regulatory mechanism that supports continuation of this service at the lowest cost without disruption.”); letter from Campbell L. Ayling to William F. Caton at 10 (filed June 30, 1997) (“NYNEX Supplemental Letter”) (“The public interest will be well-served by the Commission maintaining this long-standing approach of BOC unseparated provision of E911 services (with interLATA components). Avoidance of Section 272 separation -- which the Commission has aptly characterized as a ‘significant regulatory barrier’ -- would also be in keeping with the deregulatory intent of the Act.”).

<sup>12</sup> 47 U.S.C. § 271(c)(2)(B)(vii).

<sup>13</sup> AT&T Comments at 4.

<sup>14</sup> *See* NYNEX Supplemental Letter at 5-7; *BellSouth Petition For Forbearance*, CC Dkt. No. 96-149, Comments of Bell Atlantic at 2-4 (filed Mar. 6, 1997).


surcharges. Given that there is no regulatory benefit to requiring such duplication, the Commission should move quickly to approve the pending petitions.

### **Conclusion**

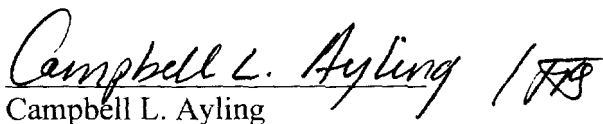
For the reasons set forth in this and prior pleadings, the Commission should forbear from application of section 272 to E911 service.

Respectfully submitted,

Edward D. Young, III  
Michael E. Glover  
Of Counsel

  
Edward Shakin  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201  
(703) 974-4864

Attorney for the  
Bell Atlantic Telephone Companies

  
Campbell L. Ayling

1095 Avenue of the Americas  
Room 3725  
New York, NY 10036  
(212) 395-8326

Attorney for the  
NYNEX Telephone Companies

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